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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 408

THE SEMINOLE NATION, PETITIONER

v.

NELLY WHITE; CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY; FORDEE RHOADES OIL COMPANY; AND UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 11-15) is reported at 224 F. 2d 173. The district court did not write an opinion.

JURISDICTION

The judgment of the court of appeals was entered on May 24, 1955. By order of Mr. Justice Clark, dated August 28, 1955, the time for filing of a petition for a writ of certiorari was extended to September 21, 1955, and the petition was filed on September 20, 1955. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether title to land under a railroad right of way was validly vested in the Seminole Indian to whom abutting lands had been allotted.

STATUTE INVOLVED

The relevant portion of Section 14 of the Act of April 26, 1906, 34 Stat. 137, 142, is set out in the Petition at page 4.

STATEMENT

Supplementing earlier statutes and agreements, the Act of April 26, 1906, made various provisions for disposing of the affairs of the Five Civilized Tribes of Indians in Oklahoma after lands had been allotted to the individual members. Section 14 thereof provided that title to land reserved from allotment for the use of any person or corporation should revert to the tribe if such use were abandoned. However, Section 14 further provided that it would not apply to land reserved from allotment for a railroad right of way and that a railroad hav-

ing a right of way through the lands of the Five Tribes could acquire title to the land encompassed by the right of way by payment of the value thereof as determined by the Secretary of the Interior "but if any such company shall fail to make payment within the time prescribed by the regulations or shall cease to use such land for the purpose for which it was reserved, title thereto shall thereupon vest in the owner of the legal subdivision of which the land so abandoned is a part." Since before 1906, the Rock Island Railroad (through its predecessor, the Choctaw, Oklahoma and Gulf Railroad) has operated a railroad through the land here involved but has not complied with the 1906 Act providing for the acquisition of title.

On March 13, 1913, Nelly White received allotment patents to certain lands as her share of the tribal lands "less [a total of 9.47] acres occupied as Right of Way by the Choctaw, Oklahoma and Gulf Rail Road." She was allotted additional acreage to compensate for the lands reserved for the railroad right of way. On August 15, 1947, she executed an oil and gas lease to the Fordee Rhoades Oil Company which included 6.39 of the 9.47 acres reserved for the railroad right of way.

On May 5, 1953, the Seminole Nation sued to quiet title to the land occupied by the railroad right of way, naming as defendants Nelly White, the Rock Island Railroad, and Fordee Rhoades Oil Company. The United States intervened on behalf of Nelly White. The trial court held that the fee title to the land was vested in Nelly White sub-

ject to an easement in the railroad and that the oil lease was valid. The court of appeals unanimously affirmed, following its earlier decisions in *United States* v. *Magnolia Petroleum Co.*, 110 F. 2d 212, and *United States* v. *Drumb*, 152 F. 2d 821.

ARGUMENT

This case does not present the issues adverted to by petitioner as to administrative questions in connection with oil and gas leases, the unitization of such leases, or the collection of income taxes (Pet. pp. 7-8). And, since the problem is confined to the Five Civilized Tribes in Oklahoma, review by this Court is not necessary in order to stabilize titles (cf. Pet. p. 8). There can be no conflict of decision and, we submit, the question is not of such importance as to warrant review by this Court.

Moreover, petitioner's attack upon the consistent line of decisions of the court below is not well taken. Generally the fee to lands traversed by a railroad or similar easement passes with the conveyance of abutting property. Rather than rejecting this principle, Congress in Section 14 of the 1906 Act acted in accordance with it and its underlying policy not to retain title in a narrow strip in a remote dedicator. *United States* v. *Magnolia Petroleum Co.*, 110 F. 2d 212; *United States* v. *Drumb*, 152 F. 2d 821; Pet. App. 14-15. Other factors, such as the loss of value resulting from the division of a tract into two parts, more than offset the advantage to allottees like Nelly White arising from the allotment to them of other acreage to compensate for the area of the right of way. See *United States* v. *Magnolia Petroleum Co.*, 110 F. 2d 212, 219.

The answer to petitioner's claim of invalidity of Section 14 is two-fold. First, title was vested in Nelly White under general principles of law without regard to the 1906 Act. Cf. Pet. App. p. 15. Second, in providing that title to the strips be vested in the owner of the legal subdivision, Section 14 simply set forth what an allotment of land subject to a railroad right of way should include—title to the underlying fee if the company failed to acquire it or lost it through non-use. Thus, the 1906 Act did not take the property of one and give it to another any more than did the original Seminole Agreement and ratifying acts providing that the tribal property be allotted to individual members of the tribe. It simply provided how the property was to be divided among the Indians themselves. And the management and control of the property of the Five Civilized Tribes is within the power of Congress. *Cherokee Nation* v. *Hitchcock,* 187 U.S. 294, 308; *Lone Wolf* v. *Hitchcock,* 187 U.S. 553; *United States* v. *Seminole Nation,* 299 U.S. 417, 428.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.
PERRY W. MORTON,
Assistant Attorney General.
ROGER P. MARQUIS,
Attorney.

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